



06 APR 2006

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In re Application of :
DU BOIS et al. :
Application No.: 10/521,619 : DECISION
PCT No.: PCT/US03/21575 :
Int. Filing Date: 10 July 2003 :
Priority Date: 15 July 2002 :
Attorney Docket No.: A-71748/MSS (46305-770) :
For: THERMAL PROCESSING SYSTEM :
AND CONFIGURABLE VERTICAL CHAMBER :

This is a decision on applicants' petition under 37 CFR 1.47(a) filed 10 February 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 10 July 2003, applicants filed international application PCT/US03/21575, which designated the United States and claimed a priority date of 15 July 2002. A copy of the international application was communicated from the International Bureau to the USPTO on 22 January 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 18 January 2005 (15 January 2005 being a Saturday and 17 January 2005 being a Federal holiday).

On 14 January 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date.

On 05 July 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 10 February 2006, applicants filed the instant petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a petition/fee for a five month extension of time, a declaration of inventors, a statement of facts by Maria Swiatek, a copy of a letter from Maria Swiatek to non-

signing inventor Jeffrey Kowalski dated 17 January 2006, and a copy of a letter from Maria Swiatek to non-signing inventor Jeffrey Kowalski dated 27 January 2006.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to item (1), the petition fee is \$200 rather than \$130. The balance of \$70 has been charged to Deposit Account 50-2319.

Items (3) and (4) have been met.


As to item (2), to establish a refusal to sign, it is required that the inventor be presented with the application papers (specification, including claims, drawings, and oath or declaration). See MPEP 409.03(d). It does not appear that a copy of the application papers including the specification was sent to Mr. Kowalski. "It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956)." MPEP 409.03(d).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. **Failure to timely file the proper response will result in abandonment of this application.** Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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Legal Examiner
PCT Legal Affairs

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